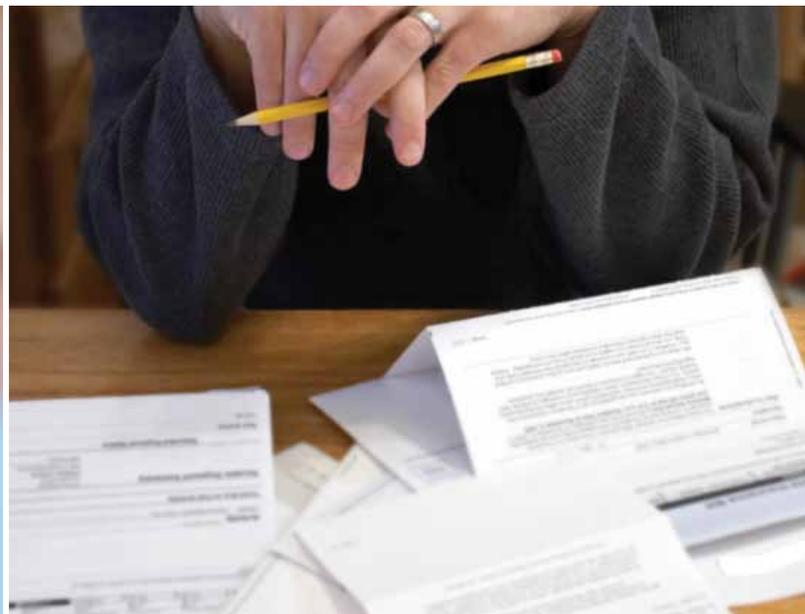




Western Australian Auditor General's Report

Public Sector Performance Report 2012

Report 9 – June 2012





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ISBN: 978-1-922015-09-9

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Public Sector Performance Report 2012

Report 9
June 2012



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

PUBLIC SECTOR PERFORMANCE REPORT 2012

I submit to Parliament my Public Sector Performance Report for 2012 under the provisions of sections 24 and 25 of the *Auditor General Act 2006*.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY
AUDITOR GENERAL

28 June 2012

Contents

| | |
|---|-----------|
| Auditor General's Overview | 4 |
| Regional Procurement | 5 |
| Department of Commerce Support to the Plumbers Licensing Board | 16 |
| Ministerial decision not to provide information to Parliament on the amount of funding Tourism WA provided for the Perth International Arts Festival | 29 |

Auditor General's Overview

This is the first Public Sector Performance report for 2012. These reports address performance by public sector agencies across a broad spectrum of government operations. This report contains the following items:

- Regional procurement
- Department of Commerce support to the Plumbers Licensing Board
- Ministerial decision not to provide information to Parliament on the amount of funding Tourism WA provided for the Perth International Arts Festival.

Given the value of goods and services agencies procure, it is important they test the market adequately to ensure best value for money. In the performance audit of regional procurement we assessed regional offices of six agencies against compliance with government policy and good procurement practice.

The audit found weaknesses in agency procurements, including insufficient market testing and lack of transparency and accountability for some procurements.

I have now undertaken a series of audits of agency procurement. The results show agencies need to pay greater attention to this area of their operations. In particular they should ensure the appropriate level of guidance and oversight is provided to staff procuring goods and services.

The second item reports the findings of our examination of issues raised with us by the Plumber's Licencing Board (the Board) relating to the support provided to the Board by the Department of Commerce (Commerce). We examined that support, and whether there was an effective working relationship between the Board and Commerce. We found there was a lack of clarity over roles and responsibilities, an ineffective working relationship and communication between the Board and Commerce, and that the administration of the Board's finances by Commerce was deficient from late 2007 onwards.

We used the Public Sector Commission's *Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees* to inform our examination. Key principles were not met in this case. I would urge all Boards and Committees and the agencies that support them to ensure they meet these principles, particularly in making sure that roles and responsibilities are clear, Boards are involved in significant decisions that affect them, and that supporting agencies provide timely, accurate and complete information.

Regional Procurement

Overview

Government agencies spent about \$9.25 billion on procuring goods and services in 2010-11. Agency procurement is guided by State Supply Commission policies, the Department of Finance's *Procurement Practice Guide for Public Authorities* and agency policies and procedures. These are aimed at achieving:

- open and effective competition
- value for money
- probity and accountability
- transparency.

In June 2011, the Auditor General reported on an audit of agency compliance with procurement requirements. That audit was limited to procurement by agencies in the metropolitan area.

The current audit focuses on procurement by agencies located in regional Western Australia and agencies based in Perth with offices in the regions. We examined procurement in six agencies across five regional locations.

Our objective was to establish whether agency procurement in regional areas complies with government policy and good practice. We asked:

- Do agencies promote open and effective competition?
- Do agencies consider value for money in their purchases and apply *Buy Local Policy* requirements where applicable?
- Do agencies manage potential conflicts of interest?
- Are agency procurements accountable and transparent?

Conclusion

No agency fully complied with procurement policies and guidelines. Common weaknesses included not sufficiently testing the market to ensure value for money, lack of documentation of purchasing decisions, and not publishing awarded contracts when required. Agencies could also provide better guidance to purchasing staff on how and when to apply *Buy Local* and *Value for Money* policies, and when to seek assistance from the Department of Finance procurement office.

Key Findings

We found a number of common weaknesses:

- Agencies did not always adequately test the market by seeking the appropriate number of quotes or, where applicable, seek quotes from common use arrangement (CUA) suppliers when not buying from a mandatory CUA. This means agencies could not ensure they had achieved value for money in their purchasing.
- Some agencies 'split orders' into lower value purchases and applied less competitive market testing, rather than basing their procurement method on the total cost over time.
- Procurements did not always have valid exemptions when the required number of quotes were not sought.
- Agencies have implemented some, but not all controls to ensure their procurements are accountable.
- No agency fully demonstrated good practice in how they identified and managed potential conflicts of interest.
- Greater transparency was needed through agencies publishing awarded contracts for more than \$20 000 on Tenders WA.
- Agencies did not adequately document procurement decisions so they could be scrutinised independently.
- Inadequate policies, procedures and templates to guide procurement staff working in regional offices, where there is potentially less central support and oversight.
- Agencies did not always involve the Department of Finance procurement office in procurements over \$20 000. This limits access to independent specialist advice and increases procurement risk.

What Should Be Done?

To ensure appropriate market testing and greater accountability and transparency in procurement decision-making agencies should:

- ensure they adequately test the market by obtaining sufficient quotes based on the estimated value of the purchase
- procure in accordance with government procurement policies when choosing not to buy from mandatory CUAs and, where more than one quote is required, invite at least one of the mandatory CUA suppliers to bid
- in exceptional circumstances obtain approval for, and document, exemptions from competitive requirements
- apply the *Buy Local Policy* to support competitive local businesses
- have adequate controls to ensure their procurements are accountable, including:
 - appropriate authorisation for awarding contracts or approving purchase orders
 - segregated decision-making
 - documenting procurement evaluations and recommendations
 - maintaining an up-to-date awarded contracts database
 - policies and procedures for receiving, managing and recording supplier complaints.

- have comprehensive strategies to manage potential conflicts of interest during procurement
- record all contracts valued at over \$20 000 on Tenders WA
- maintain sufficient documentation of their decision-making processes during procurement to allow independent scrutiny
- use Department of Finance templates and have agency policies and procedures to help staff apply State Supply policies, including the *Value for Money* and *Buy Local* policies
- involve the Department of Finance procurement office in procurements over \$20 000.

Agency Responses

Kimberley Development Commission

The Kimberley Development Commission notes the findings of the audit and has commenced a review of procurement procedures and policies. Key staff will be provided training by the Department of Finance to ensure ongoing compliance with all State Supply Commission procurement policies and procedures.

Pilbara Institute

Pilbara Institute agrees with the findings and has implemented processes and procedures to deal with the weaknesses and non compliance as reported. The recommendations provided by the Office of the Auditor General have been noted and ongoing compliance with the requirements of the State Supply Commission will be monitored.

Background

To help agencies achieve efficient and effective purchasing outcomes, the Department of Finance requires that agencies:

- plan their procurements
- use the procurement method suited to the value of the purchase
- approve the purchase appropriately
- seek any exemptions needed
- ensure this process is open, transparent and documented.

While agencies procure through their head offices, their regional offices may also purchase goods and services. Procurement is also guided by the government's *Buy Local Policy*, aimed at maximising opportunities for competitive local businesses.

We focused on purchases by regional offices as several factors increase procurement risk in the regions:

- more demand on a limited number of suppliers, due to smaller local markets
- staff are likely to know some or all local suppliers personally increasing the potential for conflicts of interest
- few staff and higher turnover in some regions can reduce knowledge of and compliance with procurement policies, guidelines and practice
- procurement expertise may be only available in Perth or where the Department of Finance has a procurement officer based locally.

What Did We Do?

Our objective was to establish whether agency procurement in regional areas complies with government policy and good practice.

The specific lines of inquiry were:

- Do agencies promote open and effective competition?
- Do agencies consider value for money in their purchases and apply *Buy Local Policy* requirements where applicable?
- Do agencies manage potential conflicts of interest?
- Are agency procurements accountable and transparent?

We examined procurement in six agencies across five regional locations:

- Department of Agriculture and Food Western Australia – Kununurra and Geraldton offices (Agriculture)
- Department of Fisheries – Albany and Geraldton offices (Fisheries)
- Department of Health – WACHS West Pilbara and Hedland Health Campus, and Kalgoorlie Hospital (Health)
- Kimberley Development Commission (KDC)
- Main Roads WA – Kalgoorlie and Albany offices (Main Roads)
- Pilbara Institute – South Hedland campus.

Procurements were selected from 2010-11. We sampled across a range of values. Sample sizes were sometimes limited by the low number of procurements over \$20 000 in some regional offices. We used an indicative sampling approach, and used judgement to select procurements to audit for specific procurement risks. We did not examine ongoing management of procurement contracts.

The audit was conducted in accordance with Australian Auditing and Assurance Standards.

What Did We Find?

Agencies did not always adequately test the market or justify why they had not done so

Agencies did not always seek enough quotes

We identified a number of deficiencies in the way agencies applied the State Supply *Open and Effective Competition Supply Policy*. We found agencies:

- did not always sufficiently test the market, based on the estimated value of the purchase. The most common forms of non-compliance included obtaining an insufficient number of quotes and not obtaining written quotes
- did not always aggregate the value of ongoing purchases from the one supplier, resulting in a less open testing of the market.

Table 1 sets out the level of non-compliance by agency. It does not include procurements below \$5 001.

| Agency | Non-compliant procurements |
|-------------------|----------------------------|
| Agriculture | 1 of 24 |
| Fisheries | 5 of 15 |
| Health | 8 of 25 |
| KDC | 3 of 5 |
| Main Roads | 2 of 30 |
| Pilbara Institute | 6 of 9 |
| Total | 25 of 108 |

Table 1: Agency compliance with minimum requirements for procurement

Four of the six agencies had procurements in our sample valued at over \$150 000. We found all had involved an open tender process or an exemption.

Promoting open and effective competition is a key State Supply objective. Using the right procurement method and obtaining sufficient quotes (Box 1) provides suppliers with fair and equitable access to government supply opportunities. It also helps maintain the transparency and integrity of government procurement.

BOX 1 STATE SUPPLY MINIMUM REQUIREMENTS FOR AGENCY PROCUREMENT

- Use common use arrangements (CUAs) to streamline purchasing and ensure efficient buying outcomes. The majority of CUAs are mandatory, but not always in the regions.

Where a CUA is mandatory in the regions and an agency chooses not to buy from it, then they must comply with government procurement policies and seek sufficient quotes. Where more than one quote is required, agencies must invite at least one contractor from the mandatory CUA. Where a CUA is not mandatory in the regions, then agencies may choose not to buy from the CUA and, instead, procure according to normal procurement policy.

- Use agency specific arrangements (ASA) where required, following agency rules and, when an ASA is set up or renewed, research the market and seek bids from a range of suppliers including local suppliers.
- Where a CUA does not apply, seek a specified number and type of quotes:
 - up to \$5 000 – one quote, direct purchase
 - \$5 001 to \$20 000 (low value) – sufficient verbal quotes and recorded, or valid exemption exists
 - \$20 001 to \$150 000 (high value) – Department of Finance procurement office involved (as required by agency partial exemption or Memorandum of Understanding with Department of Finance) and sufficient written quotes, or valid exemption exists
 - above \$150 000 (very high value) – Department of Finance procurement office involved (as required by partial exemption or Memorandum of Understanding) and public tender, or valid exemption exists.

Two agencies applied a less competitive process to the procurement of ongoing services

We identified instances where two agencies based their procurement method on the cost of individual services, rather than the estimated total cost over time. Doing this meant these agencies did not test the market rigorously as required under State Supply policy for higher value procurements. We found:

- The Pilbara Institute treated the purchase of repeat training courses from suppliers as separate procurements. In one case the annual total spend was estimated at \$160 000 and quotes had not been sought since 2008. Pilbara Institute has since set up a panel arrangement for specialised consultancy and training services.
- Pilbara Institute was treating regular works and services as individual procurements.
- One Main Roads regional office procured ongoing cleaning and security services as individual monthly purchases valued at less than \$5 000 each a month. Based on the monthly value of the services neither procurement sought quotes from suppliers. However, the estimated cost over three years for the cleaning services was over \$130 000 and for the security services over \$43 000.

A security services contract was awarded in December 2011. Main Roads advised that it will be publicly advertising the cleaning services request on Tenders WA.

When planning a purchase, agencies should assess its total cost. They can then select the appropriate method to test the market as set out in the *Open and Effective Competition Policy*. The purchase should not be split into smaller parcels and a less competitive process used.

Using the right purchasing process provides assurance that suppliers are obtaining fair and equitable access to government supply opportunities. It also helps maintain the transparency and integrity of government purchasing. Using the wrong purchasing process means agencies are unable to provide that assurance.

Agencies did not always seek quotes from a mandatory CUA supplier when deciding whether to buy from the CUA

Authorities with offices located in country areas can buy locally, even when a mandatory CUA exists. Agencies that choose not to buy from a mandatory CUA must still comply with government procurement policies and, where more than one quote is required, invite at least one contractor from the mandatory CUA to bid.

We found that the KDC, Agriculture (Kununurra) and Fisheries (Geraldton) did not obtain quotes from a CUA contractor for travel purchases. Each individual travel purchase was below \$5 000.

Procurements did not always have valid exemptions when the required number of quotes were not sought

We found procurements at five agencies where exemptions from complying with the minimum competitive requirements were not obtained or were not valid. (Table 2). In these instances we were unable to find evidence of exceptional circumstances for granting an exemption, or documents supporting this decision.

In exceptional circumstances an agency can exempt itself from the minimum requirements set out in the *Open and Effective Competition policy*. However, the agency must document the reasons for its decision.

The policy gives examples where exceptional circumstances may apply. For instance in an emergency, or where the agency has awarded a contract for a similar requirement through a competitive process within the previous 12 months and there is a reasonable expectation that the market has not changed.

| Agency | Invalid or no exemption |
|-------------------|-------------------------|
| Agriculture | 2 of 10 |
| Fisheries | 6 of 7 |
| Health | 4 of 4 |
| KDC | 3 of 5 |
| Pilbara Institute | 2 of 2 |
| Total | 17 of 28 |

Table 2: Number of agency procurements without valid exemptions

We assessed exemptions as valid if they were:

- recorded in the agency's exemptions register for very high value procurements or recorded in the procurement documentation for lesser value procurements
- had documented reasons
- were approved by an appropriately authorised person.

Valid exemptions improve the transparency of procurements that do not undertake a competitive process. Transparency is further improved when agencies publish contracts over \$20 000 on Tenders WA, even if they have been exempted from the competitive requirements. Agencies do not have to publish contracts where it considers release of the details will present a significant operational risk, such as the potential to compromise security. However, not all agencies published their exempted procurements and did not obtain the appropriate approval (Table 4).

Further, two agencies (KDC and Health) did not maintain a register of exemptions. Their partial exemption under the *State Supply Commission Act 1991* requires they record all instances where an exemption from an open tender process (for purchases over \$150 000) has been appropriately authorised.

All other agencies had a register, but we found agencies varied in the amount of information they recorded on it.

Agencies did not always apply the Buy Local Policy and consider local suppliers

Two agencies, KDC (one procurement) and Health (three procurements), did not apply a regional price preference to procurements between \$20 001 and \$150 000 we audited. However, all agencies correctly applied the *Buy Local Policy* for procurements over \$150 000.

When agencies purchase from competitive local businesses as set out in the *Buy Local Policy*, they support the government's objective to employ local people, create new skills and general economic growth.

The *Buy Local Policy* encourages agencies to consider local supply issues when planning procurements, approach the market and assess bids for all purchases. Local supply issues include local business capabilities and local content.

Further, when all bidders are located in Western Australia, agencies must apply price preferences favouring businesses located within a prescribed distance of the delivery location.

Agencies' processes are not sufficient to ensure procurements are accountable and transparent

Agencies have implemented some but not all controls to ensure their procurements are accountable

We audited nine agency controls for accountability in procurement (Box 2). We found:

- in most cases there was appropriate authorisation for the award of contracts or approval of purchase orders
- all agencies required segregated decision-making, however we identified procurements in all agencies, except Main Roads, where this had not occurred
- all agencies, except Agriculture, did not document all procurement evaluations and recommendations
- only Main Roads and Agriculture maintained an up-to-date awarded contracts database for these purchases
- four agencies had policies and procedures for receiving, managing and recording supplier complaints. The other agencies had general procedures for handling feedback and complaints but these were directed at consumers.

BOX 2 CONTROLS FOR ACCOUNTABILITY IN PROCUREMENT

- Procedures and registers clearly state which staff can make key decisions
- Agency policy requires segregated decision-making
- Decisions segregated in practice
- Appropriate authorisation for awarding contracts or purchase order approval
- Documented evaluations and recommendations for procurements more than \$20 000
- Agencies maintain an up-to-date awarded contracts database for purchases more than \$20 000
- Conduct internal procurement compliance audits
- Procedures for handling feedback or complaints are documented
- Agency can provide substantive information on the number of supplier complaints received

No agency had comprehensive strategies to manage potential conflicts of interest

We found weaknesses in all agencies' management of conflicts of interest in procurement, including one agency with minimal management controls (Table 3). Under Supply Policy a public authority must be able to demonstrate to suppliers and the community that it conducts its procurement activities with high standards of probity.

The Supply Policy lists seven elements for promoting probity, one of which is ensuring conflict of interest is well understood and strategies are in place to identify and manage potential issues.

| Strategies to manage conflicts of interest (Col) | Agriculture | Fisheries | Health | KDC | Main Roads | Pilbara Institute |
|--|-------------|-----------|--------|-----|------------|-------------------|
| Policy/procedures are in place to identify and manage potential Col | ✓ | ✓ | ✓ | ✗ | ✓ | ✓ |
| Policy is comprehensive in that it covers all types of Col, not just gifts * | ✓ | ✓ | ✓ | ✗ | ✗ | ✓ |
| Col declarations are accessible for management review and monitoring | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Central register for declared Col | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Internal audit review of compliance with Col policy and procedures | ✗ | ✗ | ✗ | ✗ | ✓ | ✓ |

Table 3: Strategies to manage conflicts of interest

*We expected that agency policy would be comprehensive and recognise conflicts of interest that include acceptance of gifts and benefits, employees' financial interests, and transactions with related parties.

A register is a common method for efficiently and effectively managing potential conflicts of interest. This register should:

- cover acceptance of goods and hospitality, and employees' financial interests and those of their immediate family
- record actions taken to mitigate declared interests
- include action taken in response to any conflicts declared.

Agencies need to show greater transparency by recording all higher value contracts on Tenders WA

All agencies, except Agriculture, had contracts over \$20 000 that had not been published on the Tenders WA website (Table 4). Agencies are required to publish all awarded contracts (except CUAs) valued at \$20 000 or more on the Tenders WA website. This helps to improve public transparency of these procurements. Any exceptions to this practice must be approved by the Chief Executive Officer (CEO).

Further, in four agencies there were contracts over \$20 000 that were not subject to the minimum competitive requirements, did not have a valid exemption from meeting these requirements, and were not published on Tenders WA. These contracts ranged in value up to \$67 000. This meant that two key controls to ensure value for money and transparency were not applied.

| Procurement controls | Agriculture | Fisheries | Health | KDC | Main Roads | Pilbara Institute |
|---|-------------|------------|--------------|------------|-------------|-------------------|
| Awarded contracts valued at \$20 000 or more published on Tenders WA (number not published / number required to be published) | ✓ (0/12) | ✗ (1/8) | ✗ (14/22) | ✗ (2/2) | ✗ (2/12) | ✗ (3/4) |

Table 4: Controls to promote transparent decision-making

Agencies did not publish contract details for at least one of the contracts required to be published on Tenders WA.

Agencies did not adequately document procurement decisions

Under Supply Policy an agency must be able to demonstrate to suppliers and the community that it conducts its procurement activities with high standards of accountability.

We expected agencies kept records of key decision points in the procurement process including quotes, evaluations and recommendations and exemption authorisation. Such records enhance integrity and reduce the risk of fraud or misconduct. A key failure common to most agencies was no documentation for their evaluation of suppliers' quotes.

We tested for adequate records to enable internal and external scrutiny of procurement decisions. We found all agencies had at least one incompletely documented purchase. For three agencies the purchases were below \$20 000. In one instance the procurement was more than \$73 000.

Agencies did not always ensure staff have sufficient guidance when procuring

Better agency policies and procedures would help staff apply the Value for Money and Buy Local policies

Agencies can help staff comply with the *Value for Money* and *Buy Local* policies by providing sufficient guidance in their policies and supporting documents.

For instance, agency procedures should prompt staff to consider local issues and achieve value for money outcomes when setting up specifications and evaluating bids. Achieving value for money does not necessarily mean selecting the bid that offers the lowest initial price. Instead, agencies should assess relevant cost and non-cost factors.

The Department of Finance has a large suite of procurement templates available on its website. These are updated regularly. Agencies should use these templates and where more detailed guidance is provided by the agency ensure this is up-to-date with current policy and process requirements.

Main Roads was the only agency that included additional guidance to staff on how to apply the *Value for Money* and *Buy Local* policies. Agency links to State Supply policies with no additional guidance and no reference to requirements in documentation was not taken as good practice.

Failure to involve the Department of Finance procurement office in procurements over \$20 000 limits access to independent specialist advice and increases procurement risk

All agencies, except those with a full exemption under the *State Supply Commission Act 1991*, are required to involve the Department of Finance in all procurements over \$20 000.

Two agencies we audited (Kimberley Development Commission and Pilbara Institute) did not always involve the Department of Finance in their procurements. The goods and services purchased ranged in value from \$22 220 to \$66 430.

Failure to do so may increase the risk of non-compliance with procurement policy and limits agencies' access to independent specialist advice. Although the procurement process is facilitated by the Department of Finance, responsibility for the purchase remains with the agency.

Department of Commerce Support to the Plumbers Licensing Board

Executive Summary

Background and scope

The Plumbers Licensing Board (the Board) is responsible for supervising around 5 500 licensed plumbers in Western Australia under the *Water Services Licensing Act (1995)* (the Act). The Board's work is funded by fees paid by plumbers for licences and compliance certificates.

The Board's operations are carried out by employees of the Department of Commerce's (Commerce) Building Commission Division (the Building Commission), who provide administrative, accounting, and regulatory services to the Board. In return Commerce may use money from the Board's income to cover the costs of providing the services described in the Act.

The Board contacted the Auditor General in April 2011, raising concerns that funds collected under the Act may have been applied for purposes outside the Act, and that the quality of support provided to it was inadequate for it to effectively manage its operations.

We examined the use of funds collected under the Act, and the support provided by Commerce to the Board from July 2004 onwards. We were seeking to assess whether funds had been applied appropriately, whether there was adequate support for the Board to fulfil its role and whether there was an effective working relationship between Commerce and the Board.

We expected to find that both Commerce and the Board would broadly comply with the standards in the Public Sector Commission's *Principles of Good Corporate Governance for Western Australian Public Sector Boards and Committees*, in particular that:

- roles and responsibilities would be clearly defined and enacted
- the Board would be involved in significant decisions affecting matters within its mandate
- timely, accurate and complete information would be provided to the Board to enable it to effectively monitor risks, finances, and operational performance.

Conclusion

The roles and responsibilities of Commerce and the Board were not clearly defined, agreed, or understood. This lack of clarity became apparent in 2007 with the proposed inclusion of the Board in the Building Commission, particularly concerning responsibility for, and control of, revenue from plumbers' fees.

This issue should have been resolved quickly and jointly based on independent expert advice. It was not, which led to the relationship and communication between Commerce and the Board being ineffective over a prolonged period. This affected both Commerce's and the Board's understanding of how the establishment of the Building Commission would change control of funds raised under the Board's legislation.

The administration of the Board's finances by Commerce was deficient from around September 2007 onwards. Commerce failed to accurately track and report the Board's financial position. As a result the Board was unable to identify the deterioration in its financial position and take steps to address it or to monitor revenue, expenditure, risks and operational performance.

The Public Sector Commission's *Principles of Good Governance* relating to clarity of roles and responsibilities, involving Boards in significant decisions affecting matters within their mandates, and providing timely, accurate and complete information were not met.

Key findings

- Commerce and the Board did not have a common understanding of roles and responsibilities, particularly control of funds, leading to an ineffective working relationship.
 - Commerce and the Board did not agree on or have a common understanding of who should control the funds collected from plumbers, and the situation was not effectively resolved.
 - Commerce received differing advice on the issue from the State Solicitor's Office and the Department of Treasury and Finance. Commerce did not provide the advice it received to the Board, and the Board did not have access to independent advice.
 - The conclusion Commerce drew from the complex set of legal and accounting advice it received was that it controlled the funds collected from plumbers. Legal advice subsequently obtained by the Auditor General during this audit stated that control of funds rested with the Board until 29 August 2011.
- The lack of clarity over roles and responsibilities resulted in the Board not having a full understanding of the impact on its role and responsibilities of the establishment of the Building Commission.
 - The Board's empowering legislation was changed in August 2011, giving the Building Commission control of funds collected under the Act, but the Board was unaware that legislative changes would have this impact until after the legislation had passed. Commerce informed us that it held the view that the amendments would not change the Board's financial powers.
 - The Board received assurances and updates that establishing the Building Commission would have no real impact on its control of funds, which would be 'quarantined' or 'guaranteed' for the Board's use. However, no impact meant different things to the Board and Commerce, because they both believed they controlled the funds. Commerce was aware of this difference and in a position to resolve it, but did not adequately do so.
 - The transition to the Building Commission was complex. Commerce provided verbal updates to the Board on the establishment of the Building Commission, but these did not provide the Board with a full appreciation of the legislative and operational changes and their impact. Commerce did not provide written briefings explaining the process, necessary changes, and the impact on the Board's financial powers.
- The administration and reporting of the Board's finances by Commerce was deficient and the information provided to the Board was inadequate to enable it to effectively monitor risks, finances, and operational performance.
 - Commerce did not provide comprehensive financial information to the Board, and failed to accurately track the Board's financial position.
 - Overhead charges to the Board were not included in all of Commerce's financial reports, and this resulted in an understatement of expenses and an overstatement of the Board's reserves.
 - Based on the information from Commerce, the Board believed it was operating with a surplus when in fact it was operating at a loss. The Board was unaware of its deteriorating financial position until it was too late.
 - When it became concerned at the lack of reliable financial information, the Board requested an external review of its financial affairs in November 2009. The first report in March 2010 identified problems in the charging of overheads, but did not fully respond to the Board's concerns. A second report provided to the Board in April 2011 confirmed that expenses had exceeded income since July 2007, exhausting the Board's reserves, and creating a deficit of around \$250 000, which Commerce accepted as the Board's actual financial position.

Agency response from the Department of Commerce

The Department of Commerce (Department) notes the findings of the Office of Auditor General (OAG) that the reporting of accurate information to the Plumbers Licensing Board (Board) about its financial position over time was deficient. The Department further notes the absence of any finding that funds raised under the *Water Services Licensing Act (1995)* (Act) were applied contrary to the Act.

The Board has raised concerns about the reporting to it of Departmental overheads expenditure. It is regrettable that the Board did not, in discharging its own responsibilities, raise its concerns with the Department's executive at an earlier point in time. The overall level of overheads to be charged by the Department to the Board was made clear to the Board from the outset of their relationship. Further, the Department provided the Board with regular reports confirming the level of overheads that were being charged to the Board. The information in these reports was drawn from the Department's central accounting system and formal spreadsheets controlled by the Department's Finance Branch. However, the Department agrees with the OAG that more consistent reliable information about total overheads being charged against the Board's revenue during the period of concern would have better enabled the Board to more quickly identify that its revenues were not meeting its expenses. This would have allowed the Board to increase its fee levels accordingly.

There are separate requirements on Commerce to ensure that the revenues collected under particular legislation (eg Plumbers' legislation) align with the costs expended in administering that legislation, and the Department is required to assess this when regularly reviewing fee levels. The Department is, with the benefit of an external cost accounting consultant currently developing enhanced costing models to be rolled out across the Department for industry-funded activities.

A clerical error has caused the Department over some five years to accumulate an extra \$1 million in revenue on behalf of the Board, due to a 10% GST charge being incorrectly added to a gazetted fee charged to plumbers. The Department sincerely regrets that this has occurred. The Department notes that as most plumbers are likely to have passed the extra charge (a small dollar amount) to a large number of individual customers, the loss to any individual is likely to be very small. Nevertheless, the Department has briefed a senior barrister to advise how best to remedy the situation.

The Department gave repeated detailed verbal briefings to the Board about the effect of the new Building Commission legislation to be passed in mid-2011, and believed that the Board was aware that the Department, and not the Board, would control the funds raised under the Act after the Building Commission came into effect. However, the Department acknowledges the finding of the OAG that the effect of the commencement of the Act on the respective responsibilities of the parties regarding control of the funds could have been more clear, and the Department looks forward to clearer communication with the Board into the future.

The Board, the Department, and the Building Commission

The Plumbers Licensing Board (the Board) supervises around 5 500 licensed plumbers in Western Australia under the *Water Services Licensing Act (1995)* (the Act). The Act requires the Board to oversee the qualifications, training, licensing, and regulation of plumbers, specifically to:

- a. *monitor matters relating to the qualification and training of plumbers, and to provide advice on those matters to the Minister and, with the approval of the Minister, to any other person or body concerned with those matters;*
- b. *advise the Minister on matters relating to the licensing and regulation of plumbers;*
- c. *administer any licensing scheme provided for by the regulations; and*
- d. *perform licensing, disciplinary and other functions given to it by the regulations.*

The Board was supported by the Office of the Water Regulator within the Department of Water from its creation in 1999 until its transfer to the Department of Consumer and Employment Protection (DOCEP) in August 2001. Support for the Board was assumed by the Department of Commerce (Commerce) in January 2009.

In 2007 government began planning to consolidate the regulation of the plumbing, painting, and building trades, by establishing a Building Commission. This initiative was part of a broader 'whole of government' objective to reduce the number of boards and committees across the public sector.

The Board resolved to join the Building Commission in December 2007, after receiving assurances that it would retain its funding and its functions. Legislation to create the Building Commission was drafted in 2008, and passed by Parliament in May 2011.

The passing of this legislation has meant that support to the Board is now provided by Commerce's Building Commission Division (the Building Commission). However, the Board remains autonomous. The Board's nine members are appointed by the Minister for Commerce. The Minister may give directions to the Board within the scope of the Act, and must table those directions in Parliament.

The Board is industry funded, receiving around \$4 million in gross income annually from fees paid by plumbers for licences and compliance certificates.

The Board does not employ its own staff. Instead it is supported under the Act by employees in Commerce's Building Commission Division, who provide administrative, accounting, and regulatory services to the Board. Commerce may use money from the Board's income to cover expenses incurred in the administration of the Act.

Commerce and the Board did not have a common understanding of roles and responsibilities, leading to an ineffective working relationship

Commerce and the Board did not have a common understanding of roles and responsibilities

The Building Commission was developed between 2007 and 2011 to consolidate regulation of the building industry and related trades. The changes to establish the Building Commission crystallised a difference between Commerce and the Board over their roles and responsibilities, particularly in relation to money received from plumbers in fees. We would have expected both Commerce and the Board to resolve this difference of views promptly using expert legal advice, or by agreement. It was not, leading to an ineffective relationship between Commerce and the Board.

Prior to plans for the Building Commission's move to new premises in 2009, the practice and accepted position was that the Board controlled the funds collected from plumbers under the Act. From 1999-2001 the Board was supported by the Office of the Water Regulator, and operated with financial autonomy, maintaining a separate bank account for revenue received under the Act.

From August 2001 the Board was supported by the Department of Consumer and Employment Protection. DOCEP regarded all revenue collected under the Act as 'PLB revenues', and agreed in January 2002 that these funds and any surplus would be 'quarantined' for the Board's activities using either a trust or a reserve. DOCEP agreed to seek reimbursement for related costs from those funds.

In December 2007 the Board agreed to join the Building Commission after seeking assurances from the responsible Minister and the Building Commission Steering Committee that the Board would 'retain its self-funding arrangements', and retain 'existing functions and funding'. The Board also rejected a financially dependent model in which 'any future funding for our operations would appear to be reliant on the Commissioner making a proportional allocation to the Board from all licence fees collected and a building levy'. The Board received assurances that 'the Board's functions and funding will not be affected by the inclusion of the Board in the first stage implementation of the Building Commission', that the Board 'will continue to operate as it does now', and that the 'only change' would be the simple substitution of the Building Commission for DOCEP (the precursor to Commerce).

During the planning and implementation of the Building Commission, Commerce took a different view of this arrangement. The difference in views of who controlled the funds from plumbers fees became fully apparent when draft legislation envisaged placing funds from plumbers fees in a special purposes account to be applied to any cost of the Commission, and then the Board were asked to contribute to the fit out of the new Building Commission premises.

The Board considered this to be outside of Commerce's and the Board's legislated powers, because it would result in fees from plumbers being applied to an activity not mentioned in the Act, and expressed its concerns to the Minister. Commerce advised the Board in January 2009 that 'per Treasury advice' the Board was required to contribute \$1.27 million to the fit-out of the new Building Commission. In June 2012 Commerce advised us that it had subsequently concluded that this transfer from the Board's funds could not be made.

Commerce entered into a Memorandum of Understanding with the Board on 26 July 2010, but this agreement did not resolve uncertainty over roles and the control of funds received from plumbers. The Memorandum stated that Commerce would be responsible for the 'management of funds, as outlined and required by' the Act, and that the annual funding levels and any substantial variations would require the agreement of the Board. This could be read to provide for either Commerce or Board control of the funds.

Commerce received advice from both the State Solicitor's Office and DTF, but the advice was not consistent

Commerce sought legal advice from the State Solicitor's Office (SSO) in February 2009 as to whether this payment could be made from the Board's funds. The SSO provided a series of legal advice to Commerce in March, April, May and June of 2009, advising that the Board controlled its own finances, which could not be applied for any purpose outside the Board's Act, and therefore could not be spent on the fit-out of the new Building Commission. SSO suggested that Commerce raise the matter with the Department of Treasury and Finance (DTF).

DTF provided related accounting advice to Commerce in late June 2009, which differed from the earlier SSO advice. DTF stated that the funds in question were controlled by Commerce, and could be applied for any Commerce expense, including the fit-out of the new Building Commission.

Commerce informed SSO of DTF's accounting treatment of the funds in June 2009. In light of these new facts, SSO invited Commerce to disregard some parts of its earlier advice, noting that these were based on incorrect factual assumptions regarding the accounting treatment of the funds. However, OAG noted that SSO did not alter its advice that, as a matter of law, the funds were received by the Board and therefore could not be treated as being under the control of Commerce.

Because the SSO had not retracted all of its prior advice, Commerce was left with two different opinions, one legal and one accounting, but this was not clearly evident to Commerce. On the basis of the DTF advice and the changes to the SSO advice, Commerce considered the funds received under the Act to be under its control.

The OAG sought independent advice from SSO during the course of this investigation, based on initial information from Commerce and the Board that neither had obtained any relevant legal advice. The SSO advice independently obtained by the OAG stated that:

- the funds in question were lawfully received by the Board, and could not lawfully be treated as revenue under the control of Commerce
- the Board remained operationally and financially autonomous until changes to its empowering legislation came into effect on 29 August 2011, after which time the Board remained operationally autonomous, but the Board's financial powers passed to the Building Commission.

These legislative changes are discussed further below.

The Board did not have the benefit of Commerce's or its own legal advice, resulting in continuing ambiguity over roles and responsibilities

The Board requested access to the advice obtained by Commerce regarding roles, powers and responsibilities, but Commerce did not pass on to the Board the legal advice from SSO or the accounting advice from DTF. Commerce considered the legal advice to be privileged, and the Board was unable to obtain legal advice independently, as it relied on Commerce staff to action its requests. As a result, the Board did not have the benefit of external expert advice to inform its views of its roles and responsibilities, and this resulted in ambiguity and misunderstanding until the Act was changed in 2011.

Commerce declined the Board's request for copies of the legal advice from the SSO, informing the Board on 28 April 2009 that legal advice was 'not available at this time for reporting to the Board'. The Board then requested Commerce's agreement to the Board obtaining independent legal advice regarding its powers. On 11 May 2009 Commerce informed the Board that further legal advice would be an unnecessary expense, and that Commerce would shortly provide the Board with further information. We found no evidence that this was provided.

The lack of clarity over roles and responsibilities resulted in the Board not having a full understanding of the impact of the establishment of the Building Commission

The Board's empowering legislation was changed in August 2011, giving the Building Commission control of funds collected under the Act, but the Board was unaware that legislative changes would have this impact until after the legislation had passed.

From 2007 onwards the Board received assurances and updates that establishing the Building Commission would have no real impact on the administration of its funds. However, no impact meant different things to the Board and Commerce because each believed it controlled the funds. Given that Commerce had received advice on roles and responsibilities, Commerce was in a position to identify and resolve the ambiguity, but failed to do so.

Although Commerce provided regular verbal updates to the Board on the changes resulting from establishing the Building Commission, Commerce did not provide detailed written briefings explaining the process and necessary legislative and operational changes. The verbal briefings and previous written assurances led the Board to believe that it would retain its functions, and continue to control its funding. As a result, it did not anticipate that the legislative changes creating the Building Commission would result in major changes for the Board.

Commerce assumed clear control of the funds collected under the Act from 29 August 2011, through amendments to the Act. The changes meant that the funds received by the Board would be placed in the Building Commission's special purpose account, from where they may be applied to any cost of the Commission. The level of fees charged to plumbers will, however, still need to reflect the cost of delivering plumbing related activities.

This was a significant change from the Board's perspective and one on which it did not feel there had been adequate information or consultation. The Board had not anticipated significant changes and was surprised when a note from Commerce in the Board's August 29 agenda paper stated:

As of today the plumbing fees for the Plumbing Licensing Board [sic] will be posted to the Building Services Account in accordance with recent legislative change, section 130 of the Building Services (Complaint Resolution and Administration) Act 2011.

This was three months after the amendments had been passed by Parliament, nine months after the Bill had been first introduced, and around three years after the submission of the related drafting instructions.

The Board had asked several times to be kept informed regarding proposed legislative changes that might affect it. Given the significance of the changes, and the history of confusion over roles and responsibilities, Commerce could have done more to ensure that the Board had a full appreciation of the legislative changes and their impact.

The administration and reporting of the Board's finances by Commerce was deficient and the information provided was inadequate to enable effective management of risks, finances and operational performance

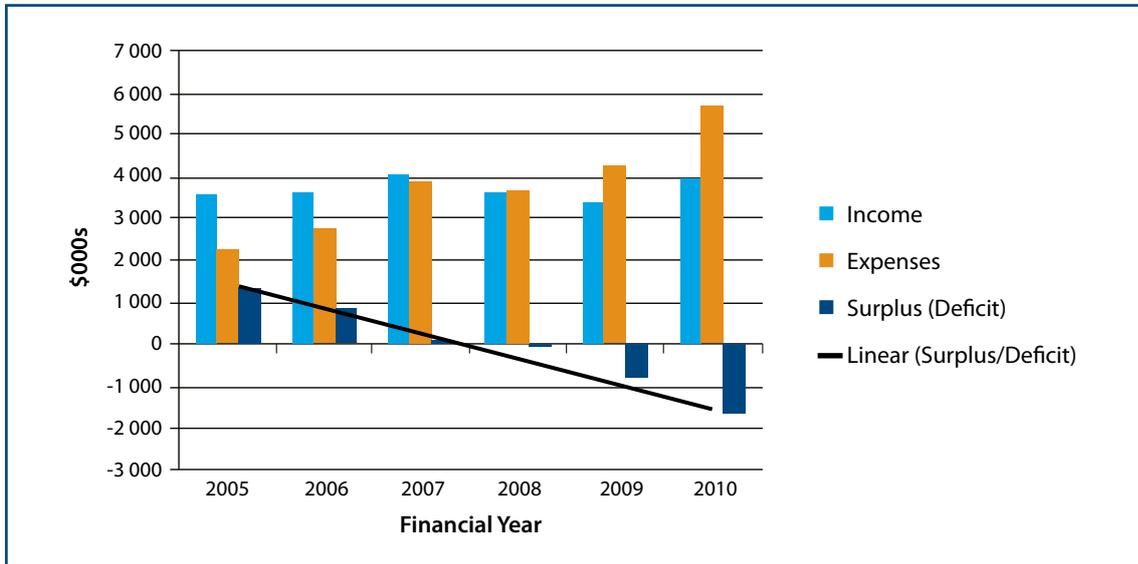
Commerce did not maintain an accurate view of the Board's finances and its reports gave the Board an incorrect view of its financial position

The Board did not receive timely and reliable financial information to enable it to know its true financial position. Overhead charges were not consistently or clearly included in the financial reports to the Board, giving an inaccurate picture of the actual indirect expenses that were being charged. Consequently the reports did not reflect the Board's true financial position, and the Board was unable to accurately understand its position over time.

As a result, the Board believed up until at least January 2010 that it was operating at a surplus when in fact it was operating at a loss. The Board was therefore unable to manage risks and its finances effectively and was unaware of its deteriorating financial position in sufficient time to take action to address it.

From 2004 to 2010 the Board was of the view that it was holding significant cash reserves of between \$1.6 million to \$3 million, and that the Board had been operating at a financial surplus over the same period. This view was supported by the financial reports provided by Commerce, but inconsistencies in these reports had prompted the Board to request an external audit in November 2009.

From January 2010, the financial reports provided by Commerce to the Board began to reveal that the Board's financial position was not what Commerce had previously reported. In January 2010 Commerce reported to the Board a year to date \$1.1 million loss. By May 2010, Commerce reported to the Board that it had a year-to-date loss of \$1.4 million, including a \$2 million charge recorded for Commerce overhead costs. In April 2011 an external financial review reported that overhead costs had never been accurately reported to the Board, and that the Board's reserves had been completely depleted, because the Board's expenses had been outstripping revenue since 2007 (Figure 1).



Source: Commerce external review

Figure 1: Plumbers Licensing – Income and Expenditure 2005-2010

Total expenses charged to the Board by Commerce increased from \$2.2 million to \$5.7 million between 2004-05 and 2009-10, while the Board's income remained stable. Costs exceeded income by \$40 143 in 2007-08, \$852 136 in 2008-09, and \$1 698 302 by June 2010.

All the financial reports to the Board we examined lacked accurate, essential information on the Board's cash balance, retained earnings, or received prepayments. A number of reports were late or not provided. The Board did not receive adequate yearly budgets from 2008 onwards, and did not receive any budget at all for the 2010-11 and 2011-12 financial years. Abbreviated monthly income and expenditure reports were provided to the Board until July 2011. Commerce stopped providing financial reports to the Board entirely in July 2011, following the passage of legislation giving the Building Commission control of the funds collected under the Act.

The Board expressed concern regarding the timeliness and quality of business information from September 2008 onwards. Over the course of 2008-09 the Board sought confirmation of its financial position and of Commerce's overhead fee. On 30 November 2009, Commerce provided information to the Board that indicated a shortfall of \$681 837 from the Board's previously understood cash position.

In response, the Board resolved on 30 November 2009 to seek an independent audit to confirm the Board's financial position. The first report in March 2010 identified problems in the charging of overheads, but did not fully respond to the Board's concerns. A second report was provided to the Board in April 2011, 18 months after the Board's initial request. The report confirmed that expenses had exceeded income since July 2007, exhausting the Board's reserves, principally due to increased salaries and related Departmental overhead charges. By April 2011 when it received the second report, the Board had been operating at a loss for four years. The fact that the Board were not provided with accurate financial reports consistently over the whole period meant that the Board could not take measures to address its financial position until it was effectively too late.

One reason why the deterioration in the financial position was not identified was because Commerce had not included overhead charges in all reports to the Board. The overhead was charged at 82 per cent of the Board's payroll costs. Once this was taken into account, the Board's expenses exceeded its income, leading to the depletion of its accumulated surplus.

The external financial review also demonstrated that Commerce received prepayments of plumbing installation fees but did not report these amounts to the Board, as Commerce considered that these prepayments were not under the Board's control. Commerce intended that installation fees would be progressively drawn from the prepaid funds as 'Certificate of Compliance' forms were lodged and processed. However, Commerce did not recognise these prepayments as revenue to the Board progressively and promptly as it should have done, leading to a significant amount remaining in the accounts over time.

Commerce ended this practice in 2010-11, following the external review requested by the Board. Prepayments of approximately \$445 000 remained to be properly accounted for at 11 June 2011. Commerce recorded the prepayments in its central accounting system as being restricted to the Plumbers Licensing Board activities, but this information was not made available to the Board.

The external financial review stated that the Board had a zero cash balance when transitioning from the Office of the Water Regulator to Commerce in 2004. However, Commerce records show that the Board carried a surplus of around \$486 264. It is not clear that this amount was properly accounted for, as Commerce accepted the external financial review as the accurate financial position of the Board, and it is unclear what happened to the previously reported surplus, if indeed it was real. Commerce did not use its core accounting system to record and track the annual surplus of the Board and any reserves carried forward. Instead, Commerce relied upon informal notes to report the Board's annual surplus.

The Board's financial position deteriorated as rising expenses exceeded revenue

Overhead costs and general expenses rose from 2005 to 2010 as the number of staff employed on behalf of the Board doubled

The number of staff supporting the Board more than doubled between 2005 and 2010, tripling the Board's payroll costs, and increasing related overhead charges. The combined overhead and payroll costs borne by the Board increased from around \$1.7 million in 2004-05 to around \$4.8 million in 2009-10. Commerce would have been more aware that the Board could not afford this level of expense if it had maintained an accurate view of the Board's financial position.

At its creation in 1999, the Board was staffed by five people. By 2004-05 the number of full time staff had increased to 16. The Board approved an increase to 33 full time staff in February 2006, and a further increase to a maximum of 42 by October 2008, including temporary staff. Commerce agreed to the increases, and advised the Board that the 2008 increase was within the Board's approved budget. The increases in staff and the associated overhead costs were a key driver in the deterioration of the Board's position, which Commerce did not track or report accurately.

The Board expressed concerns to us that the 82 per cent overhead rate charged by Commerce may have been excessive. Commerce's method of calculating its overhead rate was not inconsistent with guidance provided by DTF, and Commerce informed us that other boards and committees it supports pay higher proportional rates. The total overhead fee charged to the Board, which the Board felt was high, was driven by the number of staff allocated to it, rather than by a high rate.

Commerce is unable to provide full assurance that all the staff paid by the Board worked exclusively on plumbing regulation. In April 2011 Commerce advised the Board that some staff had been accounted for under the wrong cost centre, and evidence indicates that Board funds were being applied to pay the salaries of staff working on unrelated Building Commission matters. The Building Commission advised us in June 2012 that the number of staff paid from plumbing funds was commensurate with the number actually working on plumbing matters, because a number of other staff working on plumbing matters were paid out of non-plumbing funds. It also advised us that this was a temporary problem that was resolved by correcting errors in the Office of Shared Services database.

The Board also paid an increasing amount to cover 'general expenses', which increased 60 per cent from \$550 000 to \$880 000 between 2004-05 and 2009-10. Some of these expenses were for telecommunications and information technology costs which we noted were also included in the Commerce charge for 'overheads'. Board expenditure incurred by Commerce staff was not transparent or readily auditable.

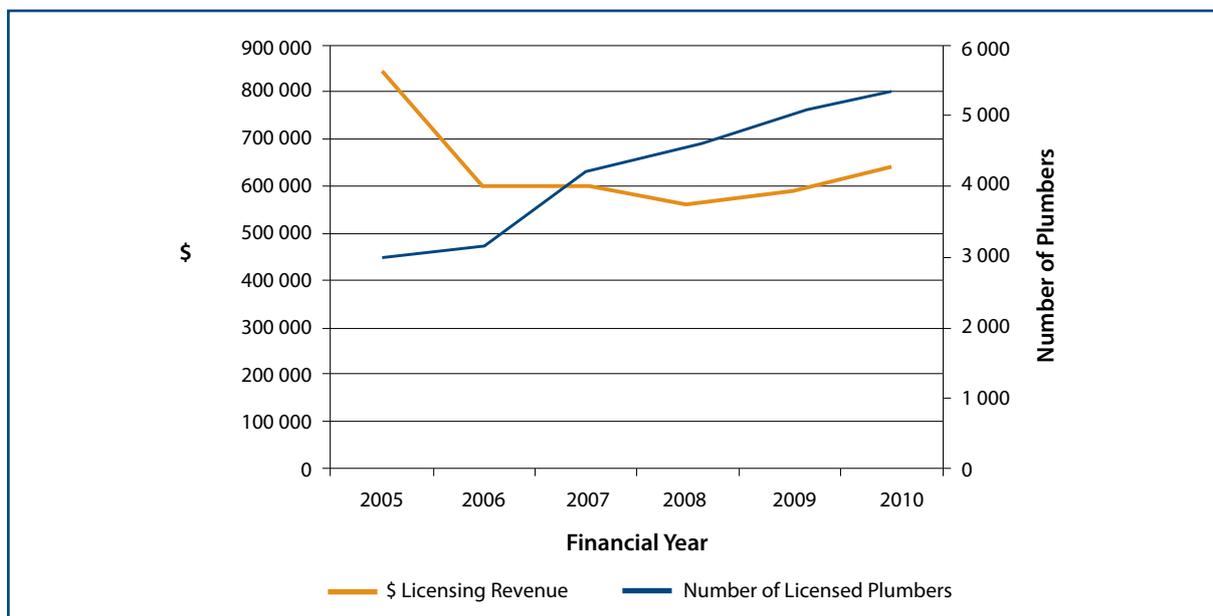
Commerce advised us that this increase is in keeping with the expansion of staff supporting the Board. However, Commerce financial records do not allow ready confirmation of whether these items were obtained exclusively for the benefit of the Board, and poor records also mean it is not possible to readily determine the accuracy of these charges.

The reported revenue received from plumbers did not match increasing industry activity

We found unusual patterns in the licensing and compliance inspection revenue reported by Commerce to the Board. The Board was not able to identify these trends, because financial reports from Commerce were not correlated with operational information such as the number of Commerce staff working for the Board, their productivity, the number of licensed plumbers, or the number and nature of compliance inspections, fines and prosecutions.

This information would have highlighted that, although the Board was funding additional staff, revenue from licensing and inspections was not growing in line with expectations based on increased industry activity. The Board could then have queried why the additional staff were not generating revenue, and considered cutting back on staff growth to control expenses.

The licensing revenue received from plumbers is directly related to the number of plumbers, and the annual fee level. The Board's reported licensing income between 2004-05 and 2007-08 fell significantly and then remained flat, but the number of registered plumbers was increasing and the fee was stable (Figure 2). The poor management information provided by Commerce meant the Board did not identify this trend, and the reason for the decline in licensing revenue remains unclear.



Source: Commerce external review

Figure 2: PLB licensing revenues versus numbers of plumbers 2005-2010

The number of licensed plumbers increased from 3 000 to 5 500 from 2004-05 to 2009-10. Licence fees reportedly remained constant, but licensing revenues fell sharply and then remained flat. A triennial licensing scheme was introduced in 2007-08. Licensing revenue typically makes up 20 per cent of the Board's annual revenue.

The Board administers a three year (triennial) licence scheme, which makes anomalous patterns of licensing revenue harder to identify over a single year. However, over a three year span, we expected the Board's licensing revenue to approximately equal the total number of licensed plumbers multiplied by the cost of the licence fee. Average annual licensing income should be approximately one third of this amount, over a three year span. From 2007-08 to 2009-10, Commerce reported licensing revenue between \$50 000 and \$75 000 less than this amount each year. The reason for this shortfall remains unclear.

Commerce reports to the Board regarding compliance inspection income also show unusual patterns. From 2005 to 2010, the number of Commerce staff supporting the Board increased, as did reported plumbing inspections by Commerce staff. Total inspection revenue increased, but not as much as we would have anticipated, given stable inspection fees, and assuming a relatively constant mix in the types of inspection (sanitation, drainage etc).

The reason for this trend is unclear. Possible reasons could be that from 2008-09 onwards, Commerce staff were not recovering the full inspection fee in every case, or were reporting duplicate inspections, or were moving inspection activity to lower fee or non-fee paying matters. However, Commerce's inspection records were not adequate to enable us to assess the correlation to revenue.

Poor financial information meant neither Commerce nor the Board could be sure that fees were set at the proper cost-recovery levels

State Solicitor's Office advice in March and April 2009 expressed concern that the Board was recovering fees and charges in excess of its costs, based on what turned out to be an inaccurate view of the Board's financial position as generating surpluses. The apparent surpluses indicated that fees had been set too high for the services provided.

In fact, the fees were probably set too low as the Board was actually running at a loss due to overhead charges not being taken into account. However, without an accurate view of the Board's costs, neither the Board nor Commerce could offer assurance that fees were set at appropriate cost recovery levels, to avoid either a significant surplus or loss. Commerce and the Board should have ensured that the Board's fees were reviewed regularly, but they did not.

A government agency fee that is set higher than the cost of providing the related public service may be regarded as unlawful. A significant surplus may indicate that the fee has become a revenue-raising mechanism, or an 'illegal tax'. In usual practice, annual reviews of fees and charges by Commerce should have ensured that fees for services were set high enough to recover the costs of providing those services, but not so high as to generate informal taxation revenue for the agency or the State. Commerce advised us that it regarded the Board as being responsible for deciding whether or not to participate in this annual review of fees and charges. However, in our view this fails to reflect Commerce's obligation in supporting the Board to inform it of government policy requirements.

A lack of accurate financial information and complete and separate accounts for each regulatory area within Commerce's Building Commission Division could mean it is not possible for Commerce to demonstrate that the fees charged by the Board accurately reflect the costs of regulation. Commerce advised us in June 2012 that it has retained a cost accounting expert to develop costings of industry specific activities, so as to measure and reconcile these costings against revenue on an ongoing basis.

A \$1 million liability has remained unresolved since June 2010

Commerce identified in June 2010 that just over \$1 million had been overcharged to plumbers and their clients over the course of five years. The overcharge accumulated over five years, following an administrative error in the calculation of GST. The error occurred because the relevant Commerce staff believed that GST needed to be added to the gazetted fee, when in fact GST was already included in that fee. The amount overcharged is made up of very small dollar amounts charged to large numbers of people.

Commerce notified the Board in July 2010 of the risk of a significant budget impact if the money was required to be refunded. Commerce then obtained legal advice at the Board's request from the SSO on 21 September 2010. The advice was that the overcharged amounts should be refunded. Commerce did not provide this advice to the Board until eight months later, on 30 May 2011, because Commerce wished to clarify the factual basis of the matter following the initial advice.

Commerce informed us that it had received final advice from the SSO on 25 May 2012, confirming that there remains a serious matter to be determined and remedied. Commerce has briefed a senior legal counsel to provide advice on how to appropriately remedy the situation.

Ministerial decision not to provide information to Parliament on the amount of funding Tourism WA provided for the Perth International Arts Festival

Opinion

The decision by the Minister for Tourism not to provide information to Parliament was reasonable and appropriate.

Introduction

This report deals with the decision by Minister Hames in his role as Minister for Tourism not to provide information on the annual funding of the four year sponsorship agreement between Tourism WA and the University of Western Australia for the Perth International Arts Festival's opening events.

Section 82 of the *Financial Management Act 2006* (FM Act) provides that, if a Minister decides that it is reasonable and appropriate not to provide certain information to Parliament concerning the conduct of an agency, then within 14 days of the decision the Minister is to cause written notice of the decision to be given to both Houses of Parliament and the Auditor General.

Section 24 of the *Auditor General Act 2006* (AG Act) requires the Auditor General to report to Parliament an opinion "as to whether a decision by a Minister not to provide information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate".

What Did We Do?

Our approach included a review of publicly available information such as annual reports and budget statements for Tourism WA, other relevant agency documents and communications and interviews with key staff. Further details about our approach in arriving at these opinions are described in our Audit Practice Statement, which is published on our website at www.audit.wa.gov.au under 'How We Audit'.

Background

The Minister for Tourism was asked a question in the Legislative Assembly on 22 March this year which read, "In relation to Eventscorp funding of the Perth International Arts Festival, I ask:

- (a) what is the annual funding of the four year sponsorship agreement;
- (b) how many interstate visitors did Eventscorp expect to attract to Western Australia each year from the sponsorship as per the sponsorship agreement;
- (c) how many international visitors did Eventscorp expect to attract to Western Australia each year from the sponsorship as per the sponsorship agreement; and
- (d) will the Minister table the sponsorship agreement between Eventscorp and the Festival; and
 - (i) if not, why not?"

In summary, the Minister responded that he would not provide the funding amounts contained in the sponsorship agreement as this information would:

- compromise Tourism WA's ability to successfully negotiate with and develop world class events for WA
- have a considerable adverse effect on Tourism WA/Eventscorp's business, professional, commercial and financial affairs, as well as those of associated third parties, such as event holders

The Minister also advised Parliament that the sponsorship agreement did not identify the number of interstate or international visitors expected to be attracted to the event. The Minister tabled a copy of the sponsorship agreement with funding information omitted.

On 13 April 2012, the Minister gave written notice to the Auditor General that he was unable to provide the funding information requested by Parliament. In addition to the reasons summarised above, the Minister advised the Auditor General that he had 'considered the public interest in releasing this information and while the public has a general right of access to information held by government agencies, this right has to be balanced against the need to protect the financial and commercial affairs of the State.'

Key Findings

The decision by the Minister not to provide the requested funding information was reasonable and appropriate. The reasonableness of the Minister's decision was supported by the following findings:

- Tourism WA uses a confidentiality clause in its funding contracts that is compliant with Section 81 of the FM Act. Funding information in these contracts is specifically identified as being commercially sensitive. While not preventing the Minister from providing funding information to Parliament, the specific identification of funding information as commercially sensitive gives weight to the existence of an obligation of confidence.
- The information in question can be shown to have commercial value and its disclosure could cause commercial harm to the State.
- The Minister's decision was supported by appropriately documented assessment against reasonable criteria for determining commercial sensitivity and possible detriment to the State.

We were pleased to note that Tourism WA has drafted internal guidelines for release of event sponsorship information. This addresses a recommendation from our February 2012 report.

Auditor General's Reports

| REPORT NUMBER | 2012 REPORTS | DATE TABLED |
|---------------|--|------------------|
| 8 | New Recruits in the Western Australia Police | 20 June 2012 |
| 7 | Pharmaceuticals: Purchase and Management of Pharmaceuticals in Public Hospitals | 13 June 2012 |
| 6 | Victim Support Service: Providing assistance to victims of crime | 16 May 2012 |
| 5 | Audit Results Report – Annual Assurance Audits completed since 31 October 2011 including universities and state training providers and Across Government Benchmarking Audits: Accuracy of Leave Records; Act of Grace and Like Payments; and Supplier Master Files | 16 May 2012 |
| 4 | Supporting Aboriginal Students in Training | 2 May 2012 |
| 3 | Beyond Compliance: Reporting and managing KPIs in the public sector | 19 April 2012 |
| 2 | Opinion on Ministerial decisions not to provide information to Parliament on the amount of funding Tourism WA provided for some events | 22 February 2012 |
| 1 | Working Together: Management of Partnerships with Volunteers | 22 February 2012 |

The above reports can be accessed on the Office of the Auditor General's website at www.audit.wa.gov.au.

On request these reports may be made available in an alternative format for those with visual impairment.

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